

Union Calendar No. 411

110TH CONGRESS
2D SESSION

H. R. 5687

[Report No. 110-650]

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Mr. CLAY (for himself and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MAY 15, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 3, 2008]

A BILL

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
 3 *“Federal Advisory Committee Act Amendments of 2008”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 5 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Ensuring independent advice and expertise.

Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act and
public disclosure.

Sec. 4. Increasing transparency of advisory committees.

Sec. 5. Comptroller General review and reports.

Sec. 6. Definitions.

Sec. 7. Effective date.

6 **SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.**

7 (a) *BAR ON POLITICAL LITMUS TESTS.*—*Section 9 of*
 8 *the Federal Advisory Committee Act (5 U.S.C. App.) is*
 9 *amended—*

10 (1) *in the section heading by inserting “MEM-*
 11 *BERSHIP;” after “ADVISORY COMMITTEES;”;*

12 (2) *by redesignating subsections (b) and (c) as*
 13 *subsections (d) and (e), respectively; and*

14 (3) *by inserting after subsection (a) the fol-*
 15 *lowing:*

16 “(b) *APPOINTMENTS MADE WITHOUT REGARD TO PO-*
 17 *LITICAL AFFILIATION OR ACTIVITY.*—*All appointments to*
 18 *advisory committees shall be made without regard to polit-*
 19 *ical affiliation or political activity, unless required by Fed-*
 20 *eral statute.”.*

21 (b) *CONFLICTS OF INTEREST DISCLOSURE.*—*Section 9*
 22 *of the Federal Advisory Committee Act (5 U.S.C. App.) is*

1 *further amended by inserting after subsection (b) (as added*
2 *by subsection (a)) the following:*

3 “(c) *CONFLICTS OF INTEREST DISCLOSURE.*—

4 “(1) *The head of each agency shall ensure that*
5 *no individual appointed to serve on an advisory com-*
6 *mittee that reports to the agency has a conflict of in-*
7 *terest that is relevant to the functions to be performed*
8 *by the advisory committee, unless the head of the*
9 *agency determines that the conflict is unavoidable*
10 *and that the need for the individual’s services out-*
11 *weighs the potential impacts of the conflict of interest.*
12 *The head of each agency shall require that each indi-*
13 *vidual the agency appoints or intends to appoint to*
14 *serve on an advisory committee inform the agency of-*
15 *ficial responsible for appointing the individual of any*
16 *actual or potential conflict of interest the individual*
17 *has that is relevant to the functions to be performed*
18 *and that, for an individual appointed to serve on an*
19 *advisory committee, the conflict is publicly disclosed*
20 *as described in section 11.*

21 “(2) *The head of each agency shall ensure that*
22 *each report of an advisory committee that reports to*
23 *the agency is the result of the advisory committee’s*
24 *judgment, independent from the agency. Each advi-*
25 *sory committee shall include in each report of the*

1 *committee a statement describing the process used by*
2 *the advisory committee in formulating the rec-*
3 *ommendations or conclusions contained in the re-*
4 *port.”.*

5 *(c) REGULATIONS.—*

6 *(1) REGULATIONS RELATING TO CONFLICTS OF*
7 *INTEREST.—Not later than 180 days after the date of*
8 *the enactment of this Act, the Director of the Office*
9 *of Government Ethics, in consultation with the Ad-*
10 *ministrator of General Services, shall promulgate reg-*
11 *ulations defining conflict of interest and such other*
12 *regulations as the Director finds necessary to carry*
13 *out and ensure the enforcement of subsection (c) of*
14 *section 9 of the Federal Advisory Committee Act, as*
15 *added by this section.*

16 *(2) REGULATIONS IMPLEMENTING FACA.—Sec-*
17 *tion 7(c) of the Federal Advisory Committee Act (5*
18 *U.S.C. App.) is amended by inserting after “(c)” the*
19 *following: “The Administrator shall promulgate regu-*
20 *lations as necessary to implement this Act.”.*

1 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-**
2 **ERAL ADVISORY COMMITTEE ACT AND PUB-**
3 **LIC DISCLOSURE.**

4 (a) *DE FACTO MEMBERS.*—Section 4 of the Federal
5 Advisory Committee Act (5 U.S.C. App.) is amended by
6 adding at the end the following:

7 “(d) *TREATMENT OF INDIVIDUAL AS MEMBER.*—An
8 individual who is not a full-time or permanent part-time
9 officer or employee of the Federal Government shall be re-
10 garded as a member of a committee if the individual regu-
11 larly attends and participates in committee meetings as if
12 the individual were a member, even if the individual does
13 not have the right to vote or veto the advice or recommenda-
14 tions of the advisory committee.”.

15 (b) *INTERAGENCY ADVISORY COMMITTEES.*—Section
16 11 of the Federal Advisory Committee Act (5 U.S.C. App.)
17 is amended by adding at the end the following:

18 “(f) *INTERAGENCY ADVISORY COMMITTEES.*—(1) Any
19 communication between—

20 “(A) an interagency advisory committee estab-
21 lished by the President or the Vice President or any
22 member or staff acting on behalf of such an inter-
23 agency advisory committee, and

24 “(B) any person who is not an officer or em-
25 ployee of the Federal Government,

1 *shall be made available for public inspection and*
2 *copying. Any portion of a communication that in-*
3 *volves a matter described in section 552(b) of title 5,*
4 *United States Code, or that is subject to a valid con-*
5 *stitutionally based privilege against such disclosure,*
6 *may be withheld from public disclosure.*

7 *“(2) In this subsection, the term ‘interagency advisory*
8 *committee’ means any committee, board, commission, coun-*
9 *cil, conference, panel, task force, or other similar group, or*
10 *any subcommittee or other subgroup thereof, established in*
11 *the interest of obtaining advice or recommendations for the*
12 *President or the Vice President, that is composed wholly*
13 *of full-time, or permanent part-time, officers or employees*
14 *of the Federal Government and includes officers or employ-*
15 *ees of at least two separate Federal agencies but does not*
16 *include an advisory committee as defined in section 3(2)*
17 *of this Act.*

18 *“(3) This subsection is not intended to apply to cabinet*
19 *meetings, the National Security Council, the Council of*
20 *Economic Advisors, or any other permanent advisory body*
21 *established by statute.”.*

22 *(c) SUBCOMMITTEES.—Section 4 of the Federal Advi-*
23 *sory Committee Act (5 U.S.C. App.) is amended by striking*
24 *subsection (a) and inserting the following:*

1 “(a) *APPLICATION.*—*The provisions of this Act or of*
2 *any rule, order, or regulation promulgated under this Act*
3 *shall apply to each advisory committee, including any sub-*
4 *committee or subgroup thereof, except to the extent that any*
5 *Act of Congress establishing any such advisory committee*
6 *specifically provides otherwise. Any subcommittee or sub-*
7 *group that reports to a parent committee established under*
8 *section 9(a) is not required to comply with section 9(e). In*
9 *this subsection, the term ‘subgroup’ includes any working*
10 *group, task force, or other entity formed for the purpose of*
11 *assisting the committee or any subcommittee of the com-*
12 *mittee in its work.’’.*

13 (d) *COMMITTEES CREATED UNDER CONTRACT.*—*Sec-*
14 *tion 3(2) of the Federal Advisory Committee Act (5 U.S.C.*
15 *App.) is amended in the matter following subparagraph (C)*
16 *by adding at the end the following: “An advisory committee*
17 *is considered to be established by an agency, agencies, or*
18 *the President, if it is formed, created, or organized under*
19 *contract, other transactional authority, cooperative agree-*
20 *ment, grant, or otherwise at the request or direction of, an*
21 *agency, agencies, or the President.’’.*

22 (e) *ADVISORY COMMITTEES CONTAINING SPECIAL*
23 *GOVERNMENT EMPLOYEES.*—*Section 4 of the Federal Advi-*
24 *sory Committee Act (5 U.S.C. App.) is further amended by*
25 *adding at the end the following new subsection:*

1 “(e) *SPECIAL GOVERNMENT EMPLOYEES.*—Committee
 2 *members appointed as special government employees shall*
 3 *not be considered full-time or part-time officers or employ-*
 4 *ees of the Federal Government for purposes of determining*
 5 *the applicability of this Act under section 3(2).”.*

6 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
 7 **MITTEES.**

8 (a) *INFORMATION REQUIREMENT.*—Section 11 of the
 9 *Federal Advisory Committee Act (5 U.S.C. App.) is amend-*
 10 *ed—*

11 (1) *by striking the section designation and head-*
 12 *ing and inserting the following:*

13 **“SEC. 11. DISCLOSURE OF INFORMATION.”;**

14 (2) *by redesignating subsection (a) as subsection*
 15 *(d) and in that subsection—*

16 (A) *by inserting the following subsection*
 17 *heading: “AVAILABILITY OF PAPER COPIES OF*
 18 *TRANSCRIPTS.—”; and*

19 (B) *by inserting after “duplication,” the*
 20 *following: “paper”;*

21 (3) *by striking “(b)” and inserting “(e) AGENCY*
 22 *PROCEEDING DEFINED.—”; and*

23 (4) *by inserting before subsection (d), as redesign-*
 24 *ated by paragraph (2), the following new sub-*
 25 *sections:*

1 “(a) *IN GENERAL.*—*With respect to each advisory*
2 *committee, the head of the agency to which the advisory*
3 *committee reports shall make publicly available in accord-*
4 *ance with subsection (b) the following information:*

5 “(1) *The charter of the advisory committee.*

6 “(2) *A description of the process used to establish*
7 *and appoint the members of the advisory committee,*
8 *including the following:*

9 “(A) *The process for identifying prospective*
10 *members.*

11 “(B) *The process of selecting members for*
12 *balance of viewpoints or expertise.*

13 “(C) *A justification of the need for rep-*
14 *resentative members, if any.*

15 “(3) *A list of all current members, including, for*
16 *each member, the following:*

17 “(A) *The name of any person or entity that*
18 *nominated the member.*

19 “(B) *The reason the member was appointed*
20 *to the committee.*

21 “(C) *Whether the member is designated as a*
22 *special government employee or a representative.*

23 “(D) *In the case of a representative, the in-*
24 *dividuals or entity whose viewpoint the member*
25 *represents.*

1 “(E) *Any conflict of interest relevant to the*
2 *functions to be performed by the committee.*

3 “(4) *A list of all members designated as special*
4 *government employees for whom written certifications*
5 *were made under section 208(b) of title 18, United*
6 *States Code, a summary description of the conflict ne-*
7 *cessitating the certification, and the reason for grant-*
8 *ing the certification.*

9 “(5) *A summary of the process used by the advi-*
10 *sory committee for making decisions.*

11 “(6) *Transcripts or audio or video recordings of*
12 *all meetings of the committee.*

13 “(7) *Any written determination by the President*
14 *or the head of the agency to which the advisory com-*
15 *mittee reports, pursuant to section 10(d), to close a*
16 *meeting or any portion of a meeting and the reasons*
17 *for such determination.*

18 “(8) *Notices of future meetings of the committee.*

19 “(9) *Any additional information considered rel-*
20 *evant by the head of the agency to which the advisory*
21 *committee reports.*

22 “(b) *MANNER OF DISCLOSURE.—*

23 “(1) *Except as provided in paragraph (2), the*
24 *head of an agency shall make the information re-*
25 *quired to be disclosed under this section available*

1 *electronically on the official public internet site of the*
2 *agency at least 15 calendar days before each meeting*
3 *of an advisory committee. If the head of the agency*
4 *determines that such timing is not practicable for any*
5 *required information, he shall make the information*
6 *available as soon as practicable but no later than 48*
7 *hours before the next meeting of the committee.*

8 “(2) *The head of an agency shall make available*
9 *electronically, on the official public internet site of the*
10 *agency, a transcript or audio or video recording of*
11 *each advisory committee meeting not later than 7 cal-*
12 *endar days after the meeting.*

13 “(c) *PROVISION OF INFORMATION BY ADMINISTRATOR*
14 *OF GENERAL SERVICES.—The Administrator of General*
15 *Services shall provide, on the official public internet site*
16 *of the General Services Administration, electronic access to*
17 *the information made available by each agency under this*
18 *section.”.*

19 “(b) *CHARTER FILING.—Section 9(e) of the Federal Ad-*
20 *visory Committee Act (5 U.S.C. App.), as redesignated by*
21 *section 2, is amended—*

22 (1) *by striking “with (1) the Administrator,”*
23 *and all that follows through “, or” and inserting “(1)*
24 *with the Administrator and”;*

1 (2) *by striking “and” at the end of subpara-*
2 *graph (I);*

3 (3) *by striking the period and inserting a semi-*
4 *colon at the end of subparagraph (J); and*

5 (4) *by adding at the end the following new sub-*
6 *paragraphs:*

7 “(K) *the authority under which the committee is*
8 *established;*

9 “(L) *the estimated number of members and a de-*
10 *scription of the expertise needed to carry out the ob-*
11 *jectives of the committee;*

12 “(M) *a description of whether the committee will*
13 *be composed of special government employees, rep-*
14 *resentatives, or members from both categories; and*

15 “(N) *whether the committee has the authority to*
16 *create subcommittees and if so, the individual author-*
17 *ized to exercise such authority.”.*

18 **SEC. 5. COMPTROLLER GENERAL REVIEW AND REPORTS.**

19 (a) *REVIEW.*—*The Comptroller General of the United*
20 *States shall review compliance by agencies with the Federal*
21 *Advisory Committee Act, as amended by this Act, including*
22 *whether agencies are appropriately appointing advisory*
23 *committee members as either special government employees*
24 *or representatives.*

1 (b) *REPORT.*—*The Comptroller General shall submit*
2 *to the committees described in subsection (c) two reports*
3 *on the results of the review, as follows:*

4 (1) *The first report shall be submitted not later*
5 *than one year after the date of promulgation of regu-*
6 *lations under section 2.*

7 (2) *The second report shall be submitted not later*
8 *than five years after such date of promulgation of reg-*
9 *ulations.*

10 (c) *COMMITTEES.*—*The committees described in this*
11 *subsection are the Committee on Oversight and Government*
12 *Reform of the House of Representatives and the Committee*
13 *on Homeland Security and Governmental Affairs of the*
14 *Senate.*

15 **SEC. 6. DEFINITIONS.**

16 *Section 3 of the Federal Advisory Committee Act (5*
17 *U.S.C. App.) is amended by adding at the end the following*
18 *new paragraphs:*

19 “(5) *The term ‘representative’ means an indi-*
20 *vidual who is not a full-time or part-time employee*
21 *of the Federal Government and who is appointed to*
22 *an advisory committee to represent the views of an*
23 *entity or entities outside the Federal Government.*

1 “(6) *The term ‘special Government employee’ has*
2 *the same meaning as in section 202(a) of title 18,*
3 *United States Code.*”.

4 **SEC. 7. EFFECTIVE DATE.**

5 *This Act shall take effect 30 days after the date of the*
6 *enactment of this Act, except as otherwise provided in sec-*
7 *tion 2(c)(1).*

Union Calendar No. 411

110TH CONGRESS
2^D Session

H. R. 5687

[Report No. 110-650]

A BILL

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

MAY 15, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed